IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5417 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KASAMBHAI ABDULGANI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5417 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/08/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the

Constitution of India, the petitioner has challenged the legality and validity of the order of detention dated 31.5.2002 passed against him by the District Magistrate, Kheda District at Nadiad, in exercise of the powers conferred on him by Section 3(2) of The Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act"). Ms.Davawala, ld. Standing Counsel for the Union of India has tendered affidavit which is taken on record. Ld. AGP Mr. Kogje has also tendered two affidavits viz; one filed by the detaining authority, and another one by the State Government, which are also taken on record.

2. The impugned order of detention passed on 31.5.2002, was executed on that day and grounds for detention were supplied to the detenu. It is the say that the sponsoring machinery had formulated grounds for detention and same were placed before the detaining authority. The detaining authority on the material placed, recorded its subjective satisfaction to the effect that the petitioner is involved in violating the provisions of a Control Order i.e " Kerosene (Restriction on use and Fixing Ceiling Price) Order, 1993" (hereinafter referred to as the Order of 1993) as well as the provisions of Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981 (hereinafter referred to as the Order of 1981). It is alleged that the blue kerosene required tobe distributed from Fair Price Shop was not adequately supplied/ distributed to the card-holders and was siphoned for getting more price than the price fixed by the Order of 1993. Detaining authority has recorded that the petitioner is likely to indulge in same activities and it would disrupt the system of distribution of blue kerosene from the Fair Price Shop started on the strength of the licence issued to the petitioner by the concerned authority. Statements of the card-holders of the concerned village as well as the copies of the ration-cards are also part of the grounds of detention intimated and served to the petitioner.

3. The petitioner has challenged the legality and validity of the order of detention passed against him on number of grounds. However, ld. counsel Mr. H.R. Prajapati appearing for the petitioners has concentrated and restricted his arguments mainly on two grounds viz. (i) that the petitioner was not supplied with the copy of the Order of 1993 and that copy of the Order of 1981 supplied to the petitioners was found illegible. Some pages of the Order of 1981 supplied to the petitioner

were illegible and this non-supply of important and vital document has resulted into serious prejudice to the petitioners in making effective representation and their right flowing from Article 22(5) of the Constitution of India, and (ii) that the detaining authority was supposed to pass the order of detention promptly and delay in passing the order of detention should be treated as fatal as this delay has not been explained by the detaining authority.

4. While enlarging the arguments on the first point i.e. non-supply of essential and vital documents referred to and relied upon by the detaining authority, Mr. Prajapati has submitted that in the written representation made by the Advocate of the petitioner dated 3.6.2002, it is clearly stated therein that the petitioner is not supplied with legible copy of the Order of 1981 and that the petitioner is not at all supplied with copy of Order of 1993. In the said representation, legible copies of certain documents were demanded. It is, however, submitted that till the date of filing of this petition, copy of the Order of 1993 has not been supplied to the petitioner. On careful perusal of documents supplied to the petitioner, the Court is satisfied that some part of Order of 1981 is not legible and so the grievance of the petitioner in this regard is genuine. It is rightly argued that above-referred two important Orders viz. Order of 1993 & Order of 1981 referred to and relied upon by the detaining authority in formulating the grounds of detention and while passing the actual orders of detention, were required to be supplied to enable the petitioner to make effective representation and non-compliance of this requirement would vitiate the legality and validity of the order of detention in view of the right flowing from Article 22(5) of the Constitution of India.

5. In support of above submission, Mr. Prajapti has placed reliance on three different decisions of this Court, namely;-

(1) Decision in the case of Bhikhabhai Ramjibhai Patel v/s State of Gujarat rendered in Spl.C.A. No. 6424/2000 decided on 1.9.2000 (Coram : D.P.Buch,J);

(2) Decision in the case of Hiralal Tulsidas Thakkar v/s State of Gujarat rendered in Spl.C.A. No. 5646/2001 decided on 20.9.2001 (Coram : A.M.Kapadia, J); and

(3) Decision in the case of Rameshkumar Sindhi Govindlal v/s State of Gujarat rendered in Spl.C.A. No. 6551/2001 decided on 11.10.2001 (Coram : A.M.Kapadia, J);

6. In all the aforesaid decisions, the petitioners were not supplied with the relevant Control Orders and in one of the decisions, the petitioner was not supplied above-reffered Order of 1993. This Court in all the aforesaid three decisions has held that the ratio of the decision in the case of Mohd. Zakir v/s Delhi Administration and others, AIR 1982 SC 696 would apply to the facts situation relating to non-supply of relevant and vital documents referred to and relied on by the detaining authority in formulating the grounds of detention and ultimately, in all the aforesaid three decisions, the orders of detention under challenge have been quashed and set aside by the Court.

7. Ld. AGP has tried to submit that the State machinery or the detaining authority is not supposed to supply any Order or Regulation which has a status of Statute. However, in view of the ratio propounded by this Court in the above-referred three decisions, this submission of ld. AGP would not help the respondents. Orders/ Control Orders are issued by the State Government in exercise of the powers flowing from the Statute and it is likely that all citizens concerned may not be aware about the number of Circulars or Control Orders or Controlling Regulations promulgated by the State in exercise of the powers flowing from a Statute. So, such Orders upon which the detaining authority intends to place reliance can be equated with the documents which are vital and important and the same are required to be supplied to the detenu. In the instant case, as discussed herein above, such important and vital documents are not supplied to the petitioner which has seriously prejudiced his right to make an effective representation flowing from Article 22(5) of the Constitution of India as per the settled legal position propounded by this Court in the above-referred three decisions. Hence, on this first ground alone, order of detention passed against the petitioner requires to be quashed and set aside. Since, impugned order of detention requires to be quashed and set aside on this ground alone, it is not necessary to deal with and go into the merits of the second point raised by the ld.

counsel appearing for the petitioner or to deal with and go into the merits of the other grounds and contentions raised by the petitioner in the memo of the petition.

8. For the reasons recorded in the oral judgment, petition is hereby allowed. Impugned order of detention dated 31.5.2002 passed by the District Magistrate, District Kheda at Nadiad against the detenu is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if they are not required to be detained in any other case. Rule is made absolute. Direct service is permitted.

01.08.2002 [C.K. BUCH, J]
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